IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 3919 of 2006()

AGST THE ORDER IN CMP No.3312/2006
IN CC.188/2006 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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PETITIONER: ACCUSED

RAFEEQ, S/O.MUHAMMED,
FATIMA MANZIL, EDAKKAD.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING S.H.O., EDAKKAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3919 of 2006

Dated this the 29th day of November 2006

O R D E R

The petitioner faces indictment in a prosecution under Section 498-A read with 109 I.P.C. The petitioner is the husband of the defacto complainant. It is his case that the matter has been settled with the defacto complainant and she has not tendered any evidence incriminating him. But when the matter was posted for 313 examination, the accused could not appear before the learned Magistrate as compulsions of his employment abroad obliged him to proceed to his place of employment. He, through his counsel, made an application that he may be exempted from personal appearance at the stage of 313 examination and his counsel may be permitted to answer the questions. Unfortunately, when the petition came up for hearing, the petitioner and his counsel were not present. The same was dismissed and warrant of arrest was issued against the petitioner and notice was ordered to the sureties. The petitioner was obliged to leave India for the place of his employment abroad. The petitioner's counsel thereupon filed yet another application as Annexure A5 before the learned Magistrate. No orders have been passed in that application. It is submitted that the Magistrate appears to feel that

the earlier application having been dismissed, the learned Magistrate cannot consider the request again.

2. If the submissions made at the Bar were correct and the learned Magistrate will have to verify that, I find no reason why the learned Magistrate should not be directed to consider Annexure A3 order afresh, ignoring the fact that the petitioner and his counsel were not present when the case was called.

3. In the result, this Criminal Miscellaneous case is allowed in part. The order dated 31/10/2006 in C.M.P.No.3312/2006 is set aside and the learned Magistrate is directed to consider the matter afresh on the next date of posting. The learned counsel for the petitioner shall be entitled to be heard on that day. I may incidentally mention that if there is no incriminating circumstances against the petitioner revealed in evidence at all, ritualistic examination of the accused under Section 313 Cr.P.C may not be necessary in the facts and circumstances of this case. Of course, it is for the learned Magistrate to consider that aspect, at the first instance.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006